

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: August 14, 2012
Re: August 22, 2012 Hearing on Complaint by Karl S. Norberg

At the July 25, 2012 meeting, the Commission decided to hold an evidentiary hearing to receive sworn testimony concerning the complaint by Karl S. Norberg alleging a campaign finance violation by his step-daughter Rosa W. Scarcelli. Ms. Scarcelli was a candidate for the Democratic nomination for Governor in the 2010 primary election. The principal issue is whether Ms. Scarcelli correctly reported receiving two contributions of \$750 in December 2009 from Karl Norberg and his son, Hillman Norberg. Mr. Norberg denies that he and his son made the contributions and contends that Ms. Scarcelli transferred the funds from a family business to make contributions in his name without his knowledge or authorization.

Ms. Scarcelli responds that Karl Norberg and Hillman Norberg supported her campaign and clearly indicated their agreement to make contributions during the Christmas holidays in 2009. She says that her mother, Pamela Gleichman, specifically authorized the transfer of money from a bank account of a family business regularly used for personal expenses. She suggests that the complaint by Mr. Norberg is in retaliation for litigation arising out of a family business dispute, in which she is alleging wrongful conduct by Karl Norberg and her mother.

The hearing will be conducted in accordance with Chapter 2 of the Commission's Rules (see attached copy) and the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001 et seq.

Pre-Hearing Conference on August 3, 2012

Following your last meeting, I mailed the attached notice dated July 27, 2012 to Karl Norberg, Pamela Gleichman, and Russell B. Pierce, Jr., Esq. (counsel for Rosa Scarcelli). It advised that the Commission would be holding a hearing on August 22, 2012 and that there would be a pre-hearing conference with the Commission Chair on August 3, 2012. It listed the issues to be addressed at the hearing and the topics to be discussed at the pre-hearing conference. Mr. Pierce, Mr. Norberg, and Ms. Gleichman participated in the conference with the Commission Chair, along with Commission staff and counsel.

Expected Witnesses

At the pre-hearing conference, the Commission Chair advised that the testimony on August 22 should take no longer than half a day. The Chair indicated that the following witnesses would be expected to testify:

- Karl S. Norberg
- Pamela Gleichman
- Rosa W. Scarcelli
- Richard Day, Chief Financial Officer of Stanford Management and treasurer of the Rosa for Maine campaign
- Emily Mellencamp Smith, Finance Director of the Rosa for Maine
- Thom Rhoads, husband of Rosa Scarcelli

The Commission Counsel and staff will conduct the direct examination of the first four witnesses, and counsel for Ms. Scarcelli will have an opportunity to cross-examine them. The remaining witnesses were proposed by Ms. Scarcelli's attorney. He will be conducting the direct examination of those witnesses.

In the July 27, 2012 notice, the Commission requested the attendance and testimony of Hillman Norberg at the August 22, 2012 hearing. He has been made aware of the Commission's request through his parents. He will not be attending because he is not in Maine and has recently begun new employment.

Issues to be addressed at the Hearing

The topics or issues to be addressed at the hearing will likely include:

- whether Karl Norberg and Hillman Norberg authorized contributions to be made on their behalf;
- whether any person (Rosa Scarcelli, Pamela Gleichman, or Gleichman & Company, Inc.) made a contribution in the name of another person;
- whether the Rosa for Maine campaign accepted a contribution made by one person in the name of another person;
- whether any person made contributions totaling more than \$750 to support Rosa Scarcelli in the 2010 Democratic gubernatorial primary election and whether Ms. Scarcelli accepted contributions from any source totaling more than \$750; and
- whether Karl Norberg and Hillman Norberg provided voluntary personal services to Rosa Scarcelli in connection with an October 2009 fundraising event in Chicago, and whether any money provided on behalf of Karl Norberg and Hillman Norberg as reimbursement for the event was exempt from being considered a contribution.

Exhibits for the August 22 Hearing

The Commission Counsel and staff have identified a number of documents that they intend to use in examining witnesses on August 22. Almost all of these exhibits were part of the packet for the Commission's July 25, 2012 meeting, and are already available to the public at www.maine.gov/ethics/meetings. Ms. Scarcelli's attorney plans to offer eleven additional exhibits, which have been provided to the Commission staff as well as to Mr. Norberg and Ms. Gleichman. The staff will have copies of the entire set of exhibits in a notebook for each of you to have for reference at the August 22 hearing. We are not providing them in advance because they have not yet been admitted into the record and the Chair may need to rule on admissibility if there are objections.

Timing of Final Determination

In addition to presenting evidence at the August 22 meeting the Commission may wish to request legal argument concerning whether any person committed a violation of law. You

may reach a final determination at the August 22nd meeting, following the hearing if you are ready, but the Commission may choose instead to close the hearing and decide the matters at issue at a subsequent meeting.

Questions

If you have any questions, please let me know. I will be out of the office for a scheduled family vacation during the week of August 13, 2012. During that week, Commission Counsel Phyllis Gardiner (Phyllis.Gardiner@maine.gov, 626-8830) and Assistant Director Paul Lavin (Paul.Lavin@maine.gov, 287-4179) will be completing the preparations for the August 22 hearing and are available to assist you. I will be back in the office on August 20.

Thank you for your consideration of this agenda item.



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To: Karl S. Norberg (by e-mail and regular mail)
Pamela Gleichman (by regular mail only)
Russell B. Pierce, Jr., Attorney for Rosa W. Scarcelli (by e-mail and regular mail)
From: Jonathan Wayne, Executive Director
Cc: Walter F. McKee, Commission Chair
Assistant Attorney General Phyllis Gardiner, Commission Counsel

Date: July 27, 2012

NOTICE OF HEARING AND PRE-HEARING CONFERENCE

This memorandum is to confirm the procedures that the Maine Commission on Governmental Ethics and Election Practices will use in considering Karl Norberg's complaint against the Rosa for Maine campaign, pursuant to 21-A M.R.S. § 1003(2). This memo confirms the separate telephone conversations I have had with Karl Norberg and Russell Pierce since yesterday.

Scheduling of Hearing for August 22, 2012

At the July 25, 2012 meeting, the Commission decided to hold an evidentiary hearing to receive sworn testimony concerning the complaint. The hearing is currently scheduled to be held on August 22, 2012 at 9:00 a.m. at the Commission's office at 45 Memorial Circle, 2nd Floor, in Augusta, Maine. The hearing will be conducted in accordance with Chapter 2 of the Commission's rules (see copy enclosed) and the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001 et seq.

Request for Testimony

The Commission requests that the following individuals be present at the August 22 hearing to provide testimony under oath:

- Rosa W. Scarcelli
- Karl S. Norberg
- Pamela Gleichman
- Hillman Norberg

At this time, all of the witnesses, except for Hillman Norberg, have confirmed that they will attend. Karl Norberg told me that he will discuss Hillman's attendance at the hearing with him over the weekend.

Issues to be addressed at the Hearing

The topics or issues to be addressed at the hearing will likely include:

- whether Karl Norberg and Hillman Norberg authorized contributions to be made on their behalf;
- whether any person (Rosa Scarcelli, Pamela Gleichman, or Gleichman & Company, Inc.) made a contribution in the name of another person;
- whether the Rosa for Maine campaign accepted a contribution made by one person in the name of another person;
- whether any person made contributions totaling more than \$750 to support Rosa Scarcelli in the 2010 Democratic gubernatorial primary election and whether Ms. Scarcelli accepted contributions from any source totaling more than \$750; and
- whether Karl Norberg and Hillman Norberg provided voluntary personal services to Rosa Scarcelli in connection with an October 2009 fundraising event in Chicago, and whether any money provided on behalf of Karl Norberg and Hillman Norberg as reimbursement for the event was exempt from being considered a contribution.

In addition to presenting evidence, there will likely be an opportunity for you to present legal argument concerning whether any person committed a violation of law. The Commission may reach a final determination at the August 22nd meeting, following the hearing, but it is also possible that the Commission will close the hearing and decide the matters at issue at a subsequent meeting. You will receive notice and have an opportunity to attend any such meeting.

Pre-Hearing Conference

The Commission Chair will be holding a pre-hearing conference by telephone on Friday, August 3, at 9:00 a.m. to discuss preliminary matters for the hearing, including:

- identification of any other witnesses that Rosa Scarcelli or Karl Norberg would like to propose for the hearing;
- how much time should be scheduled for the witnesses' testimony;
- any documents that would be introduced into evidence at the hearing, and a deadline for submitting those documents to the Commission prior to the hearing; and
- whether Karl Norberg or Rosa Scarcelli has any objection to the participation of Commissioner Michael Healy in this matter, in light of his prior legal work for Pamela Gleichman and Gleichman & Company, Inc.

At this time, Russell Pierce and Karl Norberg expect to participate in the August 3 conference and will be receiving call-in information by e-mail. If Pamela Gleichman decides to participate in the August 3 conference, please let me know by e-mail addressed to Jonathan.Wayne@maine.gov by the close of business on Wednesday, August 1. Karl Norberg and Pamela Gleichman are not currently represented by an attorney in this proceeding. If Mr. Norberg or Ms. Gleichman decide to engage an attorney to represent one or both of them at the pre-hearing conference or at the hearing, please let me know as soon as possible.

Questions

If you have any questions concerning this notice, please call me at (207) 287-4179 or e-mail me at Jonathan.Wayne@maine.gov. I will be out of the office during the period from July 30 - August 1.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 2: HEARING PROCEDURES

SECTION 1. SCOPE

These procedures shall be applicable to hearings before the Maine Commission on Governmental Ethics and Election Practices which have been called to consider any matter within the Commission's statutory authority. They shall be construed to secure the just, speedy and inexpensive determination of such matters in the public interest.

SECTION 2. NOTICE

1. Due notice of public hearings shall be given by publishing such notice in appropriate newspapers and notifying those whose conduct or report is the subject of the hearing at least 10 days prior to the hearing.
2. The notice shall specify the time and place of the hearing and matters to be considered at the hearing.

SECTION 3. PRESIDING OFFICER

1. The presiding officer at any hearing shall be either (1) the Chair, or (2) a member of the Commission selected by those members present at the hearing.
2. The presiding officer shall have the authority to:
 - A. Rule upon issues of evidence,
 - B. Regulate the course of the hearing,
 - C. Rule upon issues of procedure,
 - D. Present questions to the Commission for its determination,
 - E. Take such other action as may be ordered by the Commission or is necessary for the efficient and orderly conduct of the hearing, consistent with these regulations and applicable statutes.
3. In special cases, where good cause appears, the presiding officer may permit deviation from these procedural rules insofar as compliance therewith is found to be impractical or unnecessary.
4. The rulings of the presiding officer shall be subject to change or amendment by the Commission on motion of any Commission member.

SECTION 4. GENERAL CONDUCT

1. Opening Statement. The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.
2. Transcription of Testimony. All testimony at hearings shall be recorded and, as necessary, transcribed, with the expenses of transcription to be paid by the person requesting the transcription. Requests for transcription must be made within 60 days of the date of the Commission's decision resulting from the hearing.
3. Witnesses. Witnesses shall be sworn. The Commission may sequester witnesses as it deems necessary.
4. Testimony. Witnesses shall testify on behalf of or at the invitation or subpoena of the Commission or on behalf of the parties to the proceeding.
5. Ethics Hearings. In hearings involving legislative ethics, any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects that person shall have the right to testify, or at the discretion of the Commission and under such circumstances as the Commission shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which that person complains. Nothing herein shall be construed to prevent the Commission from granting the right of cross-examination.

SECTION 5. CONTINUANCE

All hearings conducted pursuant to these regulations may be continued for reasonable cause and reconvened from time to time and from place to place by the presiding officer as circumstances require. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The staff shall notify interested persons of the continuance in such a manner as is appropriate to insure that reasonable notice will be given of the time and place of such reconvened hearing.

SECTION 6. GENERAL EVIDENCE

1. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. However, the Maine Rules of Evidence shall apply to the introduction of verbal hearsay evidence in the same manner as at a civil trial. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded.
2. Commission Evidence. Any results of Commission investigations or data gathered during Commission investigations may be introduced into the record by the Commission. The Commission may also present such other evidence as it deems appropriate.

3. **Official Notice.** The Commission may, at any time, take official notice of relevant laws, official regulations and transcripts of other Commission hearings, judicially recognizable facts, generally recognized facts of common knowledge to the general public and physical, technical or scientific facts within its specialized knowledge. The Commission shall include in any final written decision those facts of which it took official notice unless those facts are included in the transcript of the record.
4. **Documentary and Real Evidence.** All documents, materials and objects offered in evidence as exhibits shall be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
5. **Objections.** All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. If during the course of or after the close of the hearing and during its deliberations the Commission determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such other action as it deems appropriate to correct such error.
6. **Offer of Proof.** An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

SECTION 7. CROSS-EXAMINATION

All witnesses shall be subject to cross-examination as follows:

1. Commission members, staff and counsel may ask questions at any time.
2. Legislators in proceedings involving ethics and candidates or committees in proceedings involving their campaign reports shall have the right of cross-examination in the order specified by the presiding officer.
3. Any other person whose conduct is under inquiry in a legislative ethics proceeding shall have the right of cross-examination at a point specified by the presiding officer.
4. The presiding officer may permit oral questions outside the regular order where deemed appropriate to gain information for the Commission.

SECTION 8. CONCLUSION OF HEARING

At the conclusion of the hearing, no other evidence or testimony will be allowed into the record, except as specified by the presiding officer.

SECTION 9. REOPENING THE RECORD

At any time prior to a final decision, the Commission may reopen the record for further proceedings consistent with these regulations provided, however, that the Commission shall give notice of such further proceeding at least 10 days prior to such proceedings.

SECTION 10. BRIEFS AND PROPOSED FINDINGS AND SCHEDULE

After close of the record and prior to decision the Commission may order that within a specified time any person who participated in the hearing may file briefs and proposed findings of fact with the Commission.

SECTION 11. REPRESENTATIVES

The first document filed by any person in a proceeding shall designate the name and address of a person on whom service shall be made and to whom all correspondence from the Commission and other participants in the proceeding shall be sent.

STATUTORY AUTHORITY: 1 M.R.S.A. Section 1003.

EFFECTIVE DATE:

April 29, 1987

AMENDED:

December 14, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 30, 1996

REPEALED AND REPLACED:

November 1, 1998; also converted to MS Word 2.0 format.

NON-SUBSTANTIVE CHANGES:

December 3, 1998 - minor grammar and spelling.